

STATE OF MICHIGAN
COURT OF APPEALS

In re Z. MORRICE, Minor.

UNPUBLISHED
December 17, 2015

No. 327541
Ingham Circuit Court
Family Division
LC No. 14-000696-NA

Before: GADOLA, P.J., and K. F. KELLY and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to his minor son, ZM, under MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(ii). We affirm.

I. BACKGROUND

The Department of Health and Human Services (DHHS) filed a petition asking the court to take jurisdiction over ZM and to terminate respondent's parental rights to the child after receiving reports that respondent was sexually abusing HH, ZM's half-sister who is not respondent's child. Respondent was subsequently convicted of three counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) and (2)(b), and one count of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a) and (2)(b), with regard to HH.

At respondent's termination hearing, Dr. Stephen Guertin, the child abuse specialist who examined HH, testified that during his evaluation, HH said that respondent sexually abused her between the ages of 5 and 12. HH reported that "it began with fondling or touching of her vulvar area and kissing" and then progressed to penile vaginal intercourse when she was 12 years old. Guertin explained that HH told him respondent forced her to perform fellatio on him and forced her to watch pornography with him. HH said ZM was present in the house during some of the incidents. Guertin testified that HH's physical examination supported a diagnosis of sexual trauma, and she exhibited physical conditions that were "not seen outside of people who are either sexually active or who have been assaulted."

A caseworker testified that although ZM and respondent once shared a bond, after ZM learned about respondent's abuse of HH, he no longer wanted anything to do with respondent. The trial court admitted a copy of respondent's judgment of sentence from his criminal case, and took judicial notice of the fact that CSC I involves penetration. The trial court then found that

clear and convincing evidence supported termination under MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(ii), and that termination was in the ZM's best interests.

II. ANALYSIS

A. STANDARD OF REVIEW

We review for clear error both a trial court's finding that a statutory ground for termination has been proven by clear and convincing evidence, and a finding that termination was in a child's best interests. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297.

B. STATUTORY GROUNDS FOR TERMINATION

To terminate parental rights, a trial court must find that clear and convincing evidence established at least one statutory ground under MCL 712A.19b(3). *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). Below, the trial court found that clear and convincing evidence supported termination under MCL 712A.19b(3)(b)(i), (b)(ii), (j), and (k)(ii). These statutory provisions state the following:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

(ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

* * *

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

* * *

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

The record clearly established that respondent sexually abused ZM's half-sister. Half-siblings count as siblings for purposes of analysis under MCL 712A.19b(3)(b) and (k). *In re Jenks*, 281 Mich App 514, 517-518, 517 n 2; 760 NW2d 297 (2008). At trial, the DHHS introduced evidence that respondent was convicted of three counts of CSC I and one count of CSC II with respect to HH. Dr. Guertin testified about HH's description of respondent's multiple sexual assaults over a seven year period, and explained that HH's physical examination revealed evidence of sexual trauma. Testimony also showed that ZM was in the home during several of respondent's sexual assaults of HH, that respondent posed a significant threat to ZM's mental health, and that ZM was attending counseling to address his mental health issues after learning of respondent's abuse of HH. The trial court also took judicial notice of the fact that CSC I involves penetration.

Considering this evidence, the trial court did not clearly err by finding that respondent sexually abused ZM's sibling and that the criminal sexual conduct involved penetration. MCL 712A.19b(3)(k)(ii). Further, considering the nature and extent of respondent's criminal sexual conduct against HH, the trial court did not clearly err by finding that there was a reasonable likelihood that the minor child would suffer injury or abuse in the foreseeable future if placed in respondent's home, MCL 712A.19b(3)(b)(i), or that there was a reasonable likelihood that ZM would be harmed if returned to respondent's care, MCL 712A.19b(3)(j).¹ Treatment of one child by a parent is indicative of how the parent may treat other children in the future. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). The trial court did not clearly err when it found that termination was warranted under these three statutory grounds.

With regard to the trial court's reliance on MCL 712A.19b(3)(b)(ii), this Court has made clear that this statutory provision "is intended to address the parent who, while not the abuser, failed to protect the child from the other parent or nonparent adult who is an abuser." *In re LaFrance*, 306 Mich App 713, 725; 858 NW2d 143 (2014). Because respondent was the abuser in this case, subdivision (b)(ii) was not applicable, and the trial court clearly erred by relying on this statutory provision to terminate respondent's parental rights. However, any error was

¹ "Harm" for purposes of MCL 712A.19b(3)(j) includes not only physical harm, but emotional harm as well. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). Emotional harm includes deprivation of a normal childhood home. *Id.*

harmless because clear and convincing evidence supported three other statutory grounds. *In re Powers*, 244 Mich App 111, 118-119; 624 NW2d 472 (2000).²

C. BEST INTERESTS

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). A trial court must find that termination is in a child’s best interests by a preponderance of the evidence. *In re Moss*, 301 Mich App at 90. In assessing a child’s best interests, courts should weigh all available evidence and may consider factors such as “the child’s bond to the parent, the parent’s parenting ability, [and] the child’s need for permanency, stability, and finality.” *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

Testimony presented at the termination hearing revealed that although respondent once shared a bond with ZM, after ZM learned about respondent’s abuse of HH, he no longer wanted any relationship with respondent. Respondent argues that he provided proper care for ZM up until his incarceration; however, at the time of respondent’s incarceration, ZM was eight years old, and respondent had been sexually abusing ZM’s half-sister while ZM was in the home for seven of those eight years. The trial court noted that ZM was experiencing mental and emotional turmoil as a result of respondent’s sexual abuse of HH, and he was in need of permanency and stability. Under these circumstances, the trial court did not clearly err by finding that termination was in ZM’s best interests.

Affirmed.

/s/ Michael F. Gadola
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood

² In his brief on appeal, respondent asserts that this Court should wait to consider the outcome of his criminal appeal before affirming the trial court’s termination order, but he cites no authority to support this position, thus abandoning it. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Nothing in Michigan law requires us to delay our decision while respondent exhausts all avenues of appeal, and the success of his appeal is purely speculative. Respondent’s position also ignores that termination of parental rights requires a lower standard of proof than a criminal conviction.